



## **Federal Highway Administration**

### **Notice of Final Federal Agency Actions on Proposed Highway in Indiana and Kentucky**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and the USFWS that are final pursuant to the statute. The actions relate to the proposed I-69 Ohio River Crossing (ORX) project in Evansville, Indiana and Henderson, Kentucky and grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA is advising the public that FHWA and other Federal agencies have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before **[INSERT DATE 150 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then the shorter time period applies.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204-1576; telephone: (317) 226-7344; email: [Michelle.Allen@dot.gov](mailto:Michelle.Allen@dot.gov). The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4:00 p.m., EST. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Indiana Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403-2121;

telephone: (812) 334-4261; email: Scott\_Pruitt@fws.gov. Normal business hours for the USFWS Indiana Field Office are: 8 a.m. to 4:30 p.m., EST. For the Indiana Department of Transportation (INDOT), you may contact Laura Hilden, Director - Environmental Services, 100 North Senate Avenue, Room N758-ES, Indianapolis, IN 46204; telephone: (317) 552-9692; email: lhilden@indot.in.gov. Normal business hours for INDOT are: 8:00 a.m. to 4:30 p.m., EST. For the Kentucky Transportation Cabinet (KYTC), you may contact Danny Peake, Director – Division of Environmental Analysis, 200 Mero Street, Frankfort, KY 40622; telephone: (502) 564-7250; email: Danny.Peake@ky.gov. Normal business hours for KYTC are: 8:00 a.m. to 4:30 p.m., EST.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA has approved the Final Environmental Impact Statement (FEIS) for the I-69 ORX project in Evansville, Indiana and Henderson, Kentucky and issued a Record of Decision (ROD) on September 16, 2021.

The FEIS and ROD identified Central Alternative 1B Modified as the Selected Alternative. Decisions in the FEIS and ROD that were cited in the Federal Register included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Screening of alternatives and the identification of alternatives to be carried forward for more detailed analysis in the Draft Environmental Impact Statement (DEIS).
4. Identification of Central Alternatives 1A and 1B as the Preferred Alternatives in the DEIS and the decision to prepare a combined FEIS and ROD.
5. Development and identification of Central Alternative 1B Modified as the Single Preferred Alternative.
6. Identification of Central Alternative 1B Modified as the Selected Alternative in the

combined FEIS and ROD.

Interested parties may consult the FEIS and ROD for details about each of the decisions described above and for information on other issues decided. The FEIS and ROD can be viewed and downloaded from the project Website at <https://i69ohiorivercrossing.com/>. People unable to access the website may contact FHWA, INDOT, or KYTC at the addresses listed above. Decisions in the I-69 ORX FEIS and ROD that have final approval include, but are not limited to, the following:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351].
2. Endangered Species Act [16 U.S.C. 1531-1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667d]; Migratory Bird Treaty Act [16 U.S.C. 703-712]; Bald and Golden Eagle Protection Act [16 U.S.C. 688-688d].
3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
4. Clean Air Act, 42 U.S.C. 7401-7671(q).
5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
7. Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)].
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601-9675]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901-6992(k)].
9. Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act [42 U.S.C. 61].

10. Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
11. Executive Order (E.O.) 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Notice is hereby given that the USFWS has taken the final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing the following:

1. A letter dated September 3, 2020, concurring with the effects determinations in the Biological Assessment (BA) and that no further coordination with the USFWS is needed for the species that received a “may affect, not likely to adversely affect” determination and for the northern long-eared bat, which received a “may affect, is likely to adversely affect” determination. The adverse effects for the northern long-eared bat will be addressed through Section 4(d) of the Endangered Species Act.
2. A Biological Opinion (BO) dated December 17, 2020, that the I-69 ORX project is not likely to jeopardize the continued existence of the fat pocketbook and sheepsnose mussels.
3. A Conference Opinion dated December 17, 2020, that the I-69 ORX project is not likely to jeopardize the continued existence of the longsolid mussel.

As part of the BA, the Indiana bat received an effect determination of “may affect, is likely to adversely affect.” The adverse effects for the Indiana bat will be addressed through Kentucky’s latest Statewide Bat Programmatic Agreement. However, additional coordination with the USFWS Indiana Field Office is required during final design to determine the appropriate amount and/or type of conservation to offset the effects of incidental take.

The BA and BO and other project records relating to the USFWS actions, taken

pursuant to the Endangered Species Act, 16 U.S.C. 1531-1544, are available by contacting the FHWA, INDOT, KYTC, or USFWS at the addresses provided above. The BA and BO can be viewed in Appendices K-4 and K-5 of the I-69 ORX FEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

**Jermaine R Hannon,**  
*Division Administrator,*  
*FHWA, Indianapolis, Indiana.*

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